

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE,
Plaintiff,

v.

IHI CLINICS, INC., a foreign
corporation,

Defendant.

MOTION FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT

Plaintiff, the State of Tennessee, by and through Charles W. Burson, Attorney General and Reporter, on behalf of the Division of Consumer Affairs, moves this Court for a judgment by default against the Defendant. This motion is made pursuant to Tenn. R. Civ. P. 55.01 and based on Defendant's failure to defend. In the alternative, the State moves for a summary judgment pursuant to Tenn. R. Civ. P. 56.04.

As grounds for this motion, the Plaintiff states:

1. The Complaint in this action was filed on March 22, 1995 and personally served to the Defendant, IHI Clinics, Inc. The Complaint alleges that statements and claims made in an advertisement published by Defendant in the March 21, 1995 edition of the Knoxville News-Sentinel are violative of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.* A copy of Defendant's advertisement is attached hereto as Exhibit A.
2. On April 12, 1995, on Agreed Order of Continuance was entered based on the parties' intent to amicably resolve the allegations made in the Complaint. The parties have been unable to reach a settlement.

3. Although the Defendant was represented by counsel and a Notice of Appearance was filed on behalf of Defendant, no answer was ever filed to the State's Complaint. Counsel for Defendant has now moved for withdrawal from the case.
4. Prior to his withdrawal, counsel for Defendant indicated to counsel for the State that the Defendant was uncooperative and had failed to authorize the settlement in this case. Defendant's counsel informed counsel for the State that the Defendant had terminated its counsel's services and that all correspondence from the State should be addressed directly to the Defendant.
5. As a result of these instructions, two letters were forwarded to the Defendant from Plaintiff's counsel which clearly state the Plaintiff's intent to move forward in this case. A letter dated June 3, 1996 (attached as Exhibit B) was returned "refused". The State has not received a response to a second letter, dated October 10, 1996 (attached as Exhibit C).
6. It is apparent from the Defendant's conduct that Defendant has failed to plead and defend this action.
7. Additionally, as part of the Plaintiff's Complaint, an Affidavit of expert witness Dr. David Schlundt was offered. Dr. Schlundt's Affidavit, which has also been attached to this Motion as Exhibit D, provides the basis for the State's allegations that the representations about the success, safety and permanency of Defendant's weight loss program are unfair and/or deceptive.
8. Dr. Schlundt's testimony is the only testimony before the Court on these issues. There can be, therefore, no genuine issue as to any material fact presented in the State's complaint and summary judgment pursuant to Tenn. R. Civ. P. 56.04 is appropriate.

WHEREFORE, Plaintiff moves for judgment:

1. Pursuant to Tenn. Code Ann. § 47-18-108 (a)(1) and (4), permanently enjoining Defendant, IHI Clinics, Inc. (IHIC), its agents, representatives, employees, successors and assigns, and all persons acting or claiming to act on its behalf, through any corporate or business name or device, from:

- (A) Conducting, participating in, and/or promoting any weight loss seminar in the State of Tennessee which uses hypnosis for the purpose of losing and/or reducing weight by the seminar participants unless IHIC, without competent and reliable scientific and/or medical evidence substantiating that such seminar(s) is in all respects safe.

- (B) Soliciting, promoting and/or advertising that the effect of its hypnosis service is permanent or use terms such as "forever", "once and for all", "keep it off for good", or other terms of similar import, unless IHIC possesses and relies upon competent and reliable scientific and/or medical evidence substantiating that its services do, in fact, result in permanent weight loss.

(C) Soliciting, promoting and/or advertising that its hypnosis services are effective for everyone, all, "you", or terms of similar import, unless IHIC possesses and relies upon competent and reliable scientific and/or medical evidence substantiating that its services are effective for all persons.

(D) Soliciting, promoting and/or advertising weight loss seminars representing that a certain amount of weight loss can be expected or attained by an individual unless IHIC possesses or relies upon competent and reliable scientific and/or medical evidence substantiating that specific representation.

(E) Soliciting, promoting and/or advertising weight loss seminars by representing that its program is relatively or absolutely effective at reducing weight unless IHIC possesses and relies upon competent and reliable scientific and/or medical evidence substantiating that representation.

(F) Soliciting, promoting and/or advertising that it is "safe" to lose weight under IHIC's program unless IHIC possesses and relies upon competent and reliable scientific and/or medical evidence substantiating the representation that the program is "safe" for each person.

(G) Soliciting, promoting and/or advertising its weight loss seminars without the need for physician supervision.

(H) Soliciting, promoting and/or advertising that weight loss will occur without "dieting", "calorie counting", "cravings", "starving", or any term of similar import unless IHIC possesses and relies upon competent and reliable scientific and/or medical proof substantiating such claim.

(I) Soliciting, promoting and/or advertising that weight loss will be "fast" or quick, or use any term of similar import, which infers that weight loss will be attained faster or quicker than through other weight loss programs unless IHIC possesses and relies upon competent and reliable scientific and/or medical evidence substantiating such claim.

(J) Representing, stating, soliciting, promoting and/or advertising that it, any employee, agent and/or representative is a "certified hypnotherapist".

(K) Soliciting, promoting and/or advertising that its hypnosis services worked or are working for a specified number of consumers unless IHIC has substantiation for that claim.

(L) Limiting the effect, either in time or in substance, of its "guarantee".

(M) Limiting any damages or recovery to which consumers may be entitled under

Tennessee law.

(N) Restricting any refund or guarantee exclusively to attendance at another seminar.

(O) Offering a prize, gift, award and/or incentive promotion (for example, offering an "extra bonus" of goods or services in a "drawing") without:

(1) clearly and conspicuously disclosing to consumers an alternate free method of receiving such prize, gift, award, incentive promotion or thing of value;

(2) clearly and conspicuously disclosing a statement of the odds of winning in Arabic numerals immediately adjacent to the listing of each prize, gift, award or thing of value in accordance with the Tennessee Consumer Protection Act;

(3) clearly and conspicuously disclosing the identity of the actual "bonus", prize, gift, award, incentive promotion or thing of value being offered. For example, offering an "extra bonus" or using a term or phrase of similar import, regardless of the monetary value involved, without clearly and conspicuously identifying the term; and

(4) clearly and conspicuously disclosing the approximate verifiable retail price of each "bonus", prize, gift, award, incentive promotion or thing of value offered by IHIC as required by Tenn. Code Ann. § 47-18-120(c)(1)(D) and § 47-18-120(c)(1)(E).

2. Pursuant to Tenn. Code Ann. § 47-18-108(b)(1), enter judgment against the Defendant for:

(A) Based on the information provided in Exhibit E, the Affidavit of Assistant Attorney General Jennifer L. Rawls, the costs of investigation and enforcement in the amount of Three Thousand Two Hundred and Seventy-six Dollars (\$3,276.00) which may be used for consumer protection purposes at the sole discretion of the Attorney General; and

(B) Civil penalties in the amount of Five Thousand Dollars (\$5,000.00) representing the maximum penalty of \$1,000.00 for each misrepresentation contained in the subject advertisement.

3. That, pursuant to Tenn. Code Ann. § 47-18-116, Defendant is taxed with all costs associated with this action.

In addition to the affidavit identified above, Plaintiff relies upon the contemporaneously filed Memorandum of Law and the exhibits attached hereto.